



**Virginia
Regulatory
Town Hall**

**Periodic Review and
Notice of Intended Regulatory Action
Agency Background Document**

Agency Name:	Board of Audiology and Speech-Language Pathology
VAC Chapter Number:	18 VAC 30-20-10 et seq.
Regulation Title:	Regulations Governing the Practice of Audiology and Speech-Language Pathology
Action Title:	Periodic review
Date:	

This information is required pursuant to the Administrative Process Act § 9-6.14:25, Executive Order Twenty-Five (98), and Executive Order Fifty-Eight (99) which outline procedures for periodic review of regulations of agencies within the executive branch. Each existing regulation is to be reviewed at least once every three years and measured against the specific public health, safety, and welfare goals assigned by agencies during the promulgation process.

This form should be used where the agency is planning to amend or repeal an existing regulation and is required to be submitted to the Registrar of Regulations as a Notice of Intended Regulatory Action (NOIRA) pursuant to the Administrative Process Act § 9-6.14:7.1 (B).

Summary

Please provide a brief summary of the regulation. There is no need to state each provision; instead give a general description of the regulation and alert the reader to its subject matter and intent.

Regulations are promulgated to provide educational and examination requirements for the licensure of audiologists and speech-language pathologists. Provisions also establish requirements for renewal or reinstatement of a license, fees to support the regulatory and disciplinary activities of the board, standards for supervision of unlicensed assistants, and criteria for unprofessional conduct.

Basis

Please identify the state and/or federal source of legal authority for the regulation. The discussion of this authority should include a description of its scope and the extent to which the authority is mandatory or discretionary. Where applicable, explain where the regulation exceeds the minimum requirements of the state and/or federal mandate.

The statutory authority for this regulation is found in § 54.1-2400 and Chapter 26 of Title 54.1 of the Code of Virginia.

Section 54.1-2400 establishes the general powers and duties of health regulatory boards including the responsibility to establish qualifications for licensure, to set fees and schedules for renewal, to establish requirements for an inactive license and to promulgate regulations, in accordance with the Administrative Process Act, which are reasonable and necessary to effectively administer the regulatory system.

§ 54.1-2400. General powers and duties of health regulatory boards.--The general powers and duties of health regulatory boards shall be:

- 1. To establish the qualifications for registration, certification or licensure in accordance with the applicable law which are necessary to ensure competence and integrity to engage in the regulated professions.*
- 2. To examine or cause to be examined applicants for certification or licensure. Unless otherwise required by law, examinations shall be administered in writing or shall be a demonstration of manual skills.*
- 3. To register, certify or license qualified applicants as practitioners of the particular profession or professions regulated by such board.*
- 4. To establish schedules for renewals of registration, certification and licensure.*
- 5. To levy and collect fees for application processing, examination, registration, certification or licensure and renewal that are sufficient to cover all expenses for the administration and operation of the Department of Health Professions, the Board of Health Professions and the health regulatory boards.*
- 6. To promulgate regulations in accordance with the Administrative Process Act (§ 9-6.14:1 et seq.) which are reasonable and necessary to administer effectively the regulatory system. Such regulations shall not conflict with the purposes and intent of this chapter or of Chapter 1 and Chapter 25 of this title.*
- 7. To revoke, suspend, restrict, or refuse to issue or renew a registration, certificate or license which such board has authority to issue for causes enumerated in applicable law and regulations.*

8. *To appoint designees from their membership or immediate staff to coordinate with the Intervention Program Committee and to implement, as is necessary, the provisions of Chapter 25.1 (§ 54.1-2515 et seq.) of this title. Each health regulatory board shall appoint one such designee.*
9. *To take appropriate disciplinary action for violations of applicable law and regulations.*
10. *To appoint a special conference committee, composed of not less than two members of a health regulatory board, to act in accordance with § 9-6.14:11 upon receipt of information that a practitioner of the appropriate board may be subject to disciplinary action. The special conference committee may (i) exonerate the practitioner; (ii) reinstate the practitioner; (iii) place the practitioner on probation with such terms as it may deem appropriate; (iv) reprimand the practitioner; (v) modify a previous order; and (vi) impose a monetary penalty pursuant to § 54.1-2401. The order of the special conference committee shall become final thirty days after service of the order unless a written request to the board for a hearing is received within such time. If service of the decision to a party is accomplished by mail, three days shall be added to the thirty-day period. Upon receiving a timely written request for a hearing, the board or a panel of the board shall then proceed with a hearing as provided in § 9-6.14:12, and the action of the committee shall be vacated. This subdivision shall not be construed to affect the authority or procedures of the Boards of Medicine and Nursing pursuant to §§ 54.1-2919 and 54.1-3010.*
11. *To convene, at their discretion, a panel consisting of at least five board members or, if a quorum of the board is less than five members, consisting of a quorum of the members to conduct formal proceedings pursuant to § 9-6.14:12, decide the case, and issue a final agency case decision. Any decision rendered by majority vote of such panel shall have the same effect as if made by the full board and shall be subject to court review in accordance with the Administrative Process Act. No member who participates in an informal proceeding conducted in accordance with § 9-6.14:11 shall serve on a panel conducting formal proceedings pursuant to § 9-6.14:12 to consider the same matter.*
12. *To issue inactive licenses and certificates and promulgate regulations to carry out such purpose. Such regulations shall include, but not be limited to, the qualifications, renewal fees, and conditions for reactivation of such licenses or certificates.*

Chapter 26 of Title 54.1 sets forth statutory provisions for the licensure and practice of audiologists and speech-language pathologists.

§ 54.1-2600. Definitions.

As used in this chapter, unless the context requires a different meaning:

"Audiologist" means any person who engages in the practice of audiology.

"Board" means the Board of Audiology and Speech-Language Pathology.

"Practice of audiology" means the practice of conducting measurement, testing and evaluation relating to hearing and vestibular systems, including audiologic and electrophysiological measures, and conducting programs of identification, hearing conservation, habilitation, and rehabilitation for the purpose of identifying disorders of the hearing and vestibular systems and modifying communicative disorders related to hearing loss including but not limited to vestibular evaluation, electrophysiological audiometry and cochlear implants. Any person offering services to the public under any descriptive name or title which would indicate that audiology services are being offered shall be deemed to be practicing audiology.

"Practice of speech-language pathology" means the practice of facilitating development and maintenance of human communication through programs of screening, identifying, assessing and interpreting, diagnosing, habilitating and rehabilitating speech-language disorders, including but not limited to:

- 1. Providing alternative communication systems and instruction and training in the use thereof;*
- 2. Providing aural habilitation, rehabilitation and counseling services to hearing-impaired individuals and their families;*
- 3. Enhancing speech-language proficiency and communication effectiveness; and*
- 4. Providing audiologic screening.*

Any person offering services to the public under any descriptive name or title which would indicate that professional speech-language pathology services are being offered shall be deemed to be practicing speech-language pathology.

"Speech-language disorders" means disorders in fluency, speech articulation, voice, receptive and expressive language (syntax, morphology, semantics, pragmatics), swallowing disorders, and cognitive communication functioning.

"Speech-language pathologist" means any person who engages in the practice of speech-language pathology.

§ 54.1-2601. Exemptions.

This chapter shall not:

- 1. Prevent any person from engaging, individually or through his employees, in activities for which he is licensed or from using appropriate descriptive words, phrases or titles to refer to his services;*
- 2. Prevent any person employed by a federal, state, county or municipal agency, or an educational institution as a speech or hearing specialist or therapist from performing the regular duties of his office or position;*
- 3. Prevent any student, intern or trainee in audiology or speech-language pathology, pursuing a course of study at an accredited university or college, or working in a recognized training center, under the direct supervision of a licensed or certified audiologist or speech-language pathologist, from performing services constituting a part of his supervised course of study;*
- 4. Prevent a licensed audiologist or speech-language pathologist from employing or using the services of unlicensed persons as necessary to assist him in his practice;*
- 5. Authorize any person, unless otherwise licensed to do so, to prepare, order, dispense, alter or repair hearing aids or parts of or attachments to hearing aids for consideration. However, audiologists licensed under this chapter may make earmold impressions and prepare and alter earmolds for clinical use and research.*

§ 54.1-2602. Board membership; officers; duties of Director of Department.

The Board of Audiology and Speech-Language Pathology shall consist of seven members as follows: two licensed audiologists, two licensed speech-language pathologists, one otolaryngologist, and two citizen members. The terms of Board members shall be four years. All professional members of the Board shall have actively practiced their professions for at least two years prior to their appointments.

The Board shall elect annually a chairman and a vice-chairman. The Director of the Department of Health Professions shall act as secretary-treasurer of the Board and shall keep a complete record of the proceedings and accounts of the Board.

The Board shall be authorized to promulgate canons of ethics under which the professional activities of persons regulated shall be conducted.

§ 54.1-2603. License required.

A. In order to practice audiology or speech pathology, it shall be necessary to hold a valid license.

B. Notwithstanding the provisions of subdivision 2 of § 54.1-2601 or any Board regulation, the Board of Audiology and Speech-Language Pathology shall license, as school speech-language pathologists, persons licensed by the Board of Education with an endorsement in speech-language pathology and a master's degree in speech-language pathology. The Board of Audiology and Speech-Language Pathology shall issue licenses to such persons without examination, upon review of credentials and payment of an application fee in accordance with regulations of the Board for school speech-language pathologists.

Persons holding such licenses as school speech-language pathologists, without examination, shall practice solely in public school divisions; holding a license as a school speech-language pathologist pursuant to this section shall not authorize such persons to practice outside the school setting or in any setting other than the public schools of the Commonwealth, unless such individuals are licensed by the Board of Audiology and Speech-Language Pathology to offer to the public the services defined in § 54.1-2600.

The Board shall issue persons, holding dual licenses from the Board of Education with an endorsement in speech-language pathology and from the Board of Audiology and Speech-Language Pathology as school speech-language pathologists, a license which notes the limitations on practice set forth in this subsection.

Persons who hold licenses issued by the Board of Audiology and Speech-Language Pathology without these limitations shall be exempt from the requirements of this subsection.

Public Comment

Please summarize all public comment received as the result of the Notice of Periodic Review published in the Virginia Register and provide the agency response. Where applicable, describe critical issues or particular areas of concern in the regulation. Also please indicate if an informal advisory group was or will be formed for purposes of assisting in the periodic review or development of a proposal.

An announcement of the board's review of its regulations governing the licensure of audiologists and speech-language pathologists in the regulatory process was posted on the Virginia Regulatory Townhall, sent to the Registrar of Regulations, and sent to persons on the Public Participation Guidelines mailing list for the board. Public comment was received until July 1,

2000. During the 30-day comment period, no comments were received from members of the public.

The Legislative/Regulatory Committee of the Board held a public meeting on June 27, 2000 to conduct a review of regulations and discuss related issues, such as appropriate supervision of unlicensed assistants and criteria for licensure. Based on the complaints filed with the Board against licensees, experiences of the Board in the reviewing credentials of applicants for licensure, and national standards for the profession, the Committee recommended amendments to regulations.

Effectiveness

Please provide a description of the specific and measurable goals of the regulation. Detail the effectiveness of the regulation in achieving such goals and the specific reasons the agency has determined that the regulation is essential to protect the health, safety or welfare of citizens. In addition, please indicate whether the regulation is clearly written and easily understandable by the individuals and entities affected.

The goals for this regulation are as follows:

- 1) Establish continuing competency requirements.

At a strategic planning retreat in 1998, the Board adopted a Mission Statement which says: “The Mission of the Board of Audiology and Speech-Language Pathology is to protect the health, safety and welfare of the consumer by licensing qualified individuals and by working to assure the quality of care, enforce compliance with regulations and statutes governing the practice, and promote the integrity of the professions.” Among the obstacles to its achieving its mission, the Board identified: no standard for continuing competency of practitioners; changing technology and the need for the Board to be able to respond; the demand for a reduced level of care to the lowest common denominator; and a trend toward multi-skilling.

The Code of Virginia specifically authorizes the Board to establish requirements for relicensure which will assure the continuing competency of the practitioners it licenses. As the practices of audiology and speech-language pathology have evolved and changed, the minimal competencies that were evidenced by completion of requirements for initial licensure may no longer be adequate.

In the professions of audiology and speech-language pathology, the knowledge base has continued to grow, but the growth in utilization of technology has been even more dramatic. Educational programs have been modified to accommodate changes in practice and to incorporate newer technology, but some who currently hold licensure are not keeping up with those changes and may not be offering the consumers of the Commonwealth the most competent and safest care. While no definitive numbers are available, it is estimated by members of the Board that only about half of its licensees regularly obtain hours of continuing education .

In addition, the economic demands of third-party payers have led to an increased use of assistive personnel in the practices of audiology and speech-language pathology. With such usage, there are

new demands on the licensed professionals to make evaluative judgements on which tests and procedures can be safely delegated to these unlicensed, unregulated persons. There is a need for continuing education in the delegation of tasks to such persons who are treating consumers with disabilities who are being rehabilitated from disease or injury.

Therefore, the Board found that it is essential to establish some evidence of continuing education as a condition for renewal of licensure in order to assure the public of the continuing competency and safety of its practitioners. To that end, proposed regulations establishing continuing competency requirements for renewal of licensure were adopted by the Board and submitted for Executive Branch review. The Department of Planning and Budget prepared the Economic Impact Analysis and forwarded the regulation on March 24, 2000 to the Secretary of Health and Human Resources. Once the Board has received permission to publish proposed regulations, a public hearing will be scheduled and comment on the regulation will be encouraged.

2) Achieve positive ratings on Customer Service Satisfaction Survey for application process and renewal of licenses.

The Board reviewed the responses of recent licensees on the Customer Service Satisfaction Surveys and determined that the application process and renewal of licenses was effective in that instructions for making application are clear and easy to understand and complete. The vast majority of responders agreed or strongly agreed that the licensure process was easy and efficient. Therefore, no changes in regulation are being considered in respect to applying or renewing licensure.

Alternatives

Please describe the specific alternatives for achieving the purpose of the existing regulation that have been considered as a part of the periodic review process. This description should include an explanation of why such alternatives were rejected and this regulation reflects the least burdensome alternative available for achieving the purpose of the regulation.

The two major issues facing the Board in the regulation of audiologists and speech-language pathologists and the alternatives to dealing with those issues are discussed below:

1. Requirements for licensure that are consistent with current practice and provide assurance to the public:

- The American Speech-Language-Hearing Association (ASHA) is currently the only credentialing body recognized by the Board for licensure of applicants. For audiologists, the American Board of Audiology is equally valid in credentialing of persons who are competent to practice audiology. Therefore, the Board intends to recognize that body and add language to include any equivalent accrediting body approved by the Board.
- Current regulations require either passage of the qualifying examination within three years preceding the date of licensure or employment for one of the past three years or two of the past five years. The Board proposes to make that requirement less restrictive and cumbersome.

- As an alternative to licensing persons who have completed their Certificate of Clinical Competence and are credentialed by ASHA, the current regulations allow the Board to issue a license to an applicant who has completed his education and examination but has not completed any hours of supervised clinical practice. Virginia is the only state in the U.S. in which an audiologist or speech-language pathologist can be fully licensed without any clinical hours. The Board has repeatedly heard testimony from licensees about the inadequacy of that requirement and the potential for harm to the public from persons who are licensed for independent practice but have not had supervised clinical training. To address the issue Board is recommending the addition of a requirement for supervised experience that will be reasonable but sufficient to ensure competency for practice.

2. Supervision of unlicensed persons to ensure compliance with law and regulation and provide for public protection:

The most troublesome issue facing the Board in the regulation of speech-language pathologists and audiologists is the appropriate use of unlicensed assistants in practice. The Code of Virginia permits such use but also restricts the practice of audiology and speech-language pathology as defined in § 54.1-2600 to persons who hold a license from the Board. Licensees often have a dilemma about what tasks constitute practice and what tasks may be appropriately delegated. The Board currently has several cases under investigation involving accusations of inappropriate delegation and fostering unlicensed practice.

To address issues related to the use of unlicensed persons in practice, the Board has considered a variety of possible actions. It has considered the possibility of legislative actions to regulate assistants, so there would be some measure of their competency and recourse for their actions. A study by the Board of Health Professions concluded that there was insufficient evidence of risk of harm to warrant licensure of these persons, provided they are appropriately supervised in the performance of delegated tasks which are commensurate with their training. Therefore, the Board is not recommending regulation of assistants but rather clarification of its regulation.

To provide greater regulatory clarity, the Board has reviewed the regulations of the Board of Nursing for delegation of certain tasks to unlicensed persons. While the nursing regulations are more extensive than is required for this Board, there are several provisions that could be applicable in assuring the appropriate delegation of a task to an unlicensed person. Those regulations specify that tasks and level of supervision must be appropriate to the level of competency of the licensed person and consistent with other related factors. Likewise, the Board has considered incorporation of language similar to that governing the use of unlicensed persons by licensees in the medical profession in § 54.1-2901 of the Code of Virginia. Under exceptions to the practice of medicine, the Code permits delegation of activities or functions that are non-discretionary and do not require the exercise of professional judgment and are normally and customarily delegated by practitioners of the healing arts. Such a standard may serve to provide clarity to the issue of delegation and practice of unlicensed persons in these professions.

Recommendation

Please state whether the agency is recommending the regulation be amended or terminated and the reasons such a recommendation is being made.

The board is recommending amendments to its regulations for the licensure of audiologists and speech-language pathologists in order to address concerns about unqualified persons being licensed by the board and adequacy of supervision for unlicensed assistants and appropriate delegation of certain tasks. Other amendments are recommended for greater clarity for the regulated entities.

Substance

Please detail any changes that would be implemented.

18 VAC 30-20-10. Definitions.

The Board will consider modifications to the definition of "supervision" to clarify the responsibilities of a licensee in delegating and supervising tasks to an unlicensed person. Also, a definition of an "unlicensed person," similar to the one in the nursing regulations may be added.

18 VAC 30-20-170. Requirements for licensure.

- Additional accrediting bodies may be recognized for credentialing candidates for licensure consistent with professional standards and with the authority of the Board to approve accrediting bodies.
- The requirement for either completion of the qualifying examination or employment for one of the past three years or two of the past five years may be modified to remove any unnecessary barrier to licensure.
- For applicants who have not obtained a Certificate of Clinical Competence and been credentialed by ASHA or the American Board of Audiology, some requirement for supervised clinical practice may be necessary before the Board issues a full license to practice independently. The Board will consider requiring 1500 hours of documented practice under supervision of a licensed audiologist or speech-language pathologist as a prerequisite for licensure. Such a requirement would be consistent with or less stringent than criteria set by all other states in the U.S.

18 VAC 30-20-240. Supervisory responsibilities.

Additional provisions clarifying the supervisory responsibilities are recommended by the board to address concerns about unlicensed practice by assistive personnel. As discussed in the "Alternatives" section, the board intends to consider regulatory provisions for delegation to unlicensed persons recently enacted by the Board of Nursing and also the language of the Code for practitioners of the healing arts. The intent of the board is to ensure that only those tasks

which are non-discretionary and non-evaluative are delegated to unlicensed assistants and that the licensee remains fully responsible for patient safety and outcomes.

18 VAC 30-20-280. Unprofessional conduct.

- Current rules prohibit diagnosis or treatment solely by written correspondence. The intent of the rule is to prohibit a diagnosis on a patient who has not actually be examined or evaluated by the licensee. Since technology would now open the possibility of making a diagnosis solely by correspondence via the Internet, the language of the prohibition needs to be clarified to cover situations other than "written correspondence." The amended language would need to ensure that an examination could occur by telepractice and that a licensee would be allowed to provide consultation on the patient of another licensee.
- Other minor clarifications or deletions of unnecessary provisions are being considered.

Family Impact Statement

Please provide a preliminary analysis of the proposed regulatory action that assesses the potential impact on the institution of the family and family stability including the extent to which the regulatory action will: 1) strengthen or erode the authority and rights of parents in the education, nurturing, and supervision of their children; 2) encourage or discourage economic self-sufficiency, self-pride, and the assumption of responsibility for oneself, one's spouse, and one's children and/or elderly parents; 3) strengthen or erode the marital commitment; and 4) increase or decrease disposable family income.

In its preliminary analysis of the proposed regulatory action, the agency has determined that there is no potential impact on the institution of the family and family stability.